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1973

February 9, 1973

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## TAKING R.G. SERIOUSLY

/CAUTION: The Editors are obligated to warn you that the taking seriously of Res Gestae in excess amounts may be hazardous to your health. The writer of the following letter seems to have the dosage just about right.<sup>7</sup>

To the Editors:

Last week's Res Gestae seemed to me more like a small anthology of essays rather than a newspaper, so I offer comment on

a theme I discerned running through a number of the pamphlet's articles.

The U-M news release on our Prof. Kamisar read like the dialogue from a Batman comic book, albeit there were serious charges made therein. Especially this one; that the Kirby ruling is "unworthy of a judicial system bent on dealing with the realities of the criminal process rather than its labels." Now if we flip back from page 11 to page 4, Mr. Leo H. Elliott Jr. is offering the legitimate discovery that words are woefully inadequate to experience. There we find that

con't. on p. 2

# RES GESTAE

Ann Arbor, Michigan

"Where Entropy Originates"

February 9, 1973

## WHERE ARE THEY NOW?

### Matt McCauley : Small Town Lawyer

The man in a direct way responsible for all of us being here can presently be found knocking heads with tort claimants in the Washtenaw County Circuit Court. An unlikely task for the mild-mannered, former admissions director of a major Midwestern law school? For Matthew P. McCauley, who left the Michigan Law admissions job last July to become an associate with the Ann Arbor law firm of DeVine & DeVine, courtroom encounters are an everyday affair.

Peering through the noon-hour haze at the old Del Bar, McCauley discussed his new job between bites of a "Det-burger" and potato chips. "I'm impressed with how really contentious people can be," said the 1967 graduate of the Law School.

"While I enjoy working with people, I take a pretty conciliatory view of life and try to encourage clients to settle matters

without proceedings," he continued. "But people don't come to lawyers until they have already exhausted their common ground. By the time he gets to a lawyer, the typical client wants vindication. Lawyers don't render any apparent service when they settle a case; people tend to feel they could have done that themselves. They pay for a day in court and they want it."

The size of the client seems not to affect this attitude. McCauley's firm represents several large insurance companies and, as a novice attorney, he has defended the insurers in some of their smaller damage cases. He especially remembers one of his earliest cases where an auto liability carrier resisted making good on its insured's \$180. claim because of a technical failure to notify the company within a set-time. Given the sum in question and the ambiguities of the fact issue, McCauley was ready for an out-of-court disposition. The insurance company insisted he push the matter to a judgment. So he did. The company lost.



con't on p. 3

# LETTERS

SPEIRN

cont'd from p.1

it was the particular use of words to describe the world in legal terms that so disillusioned Mr. Elliott. He reports "I became dissatisfied with how the 'principles' formulated by judges or lawyers failed to meet the 'issues' head on."

It seems to me that Kamisar and Elliott are knocking on the same door. Elliott tells us it is somehow in "the nature of words" that we always lose much in translating our experience of the world into language. But this, by itself, is a general problem. His real complaint, although he does not draw it this narrowly himself, is as I indicated above; that if words are feeble vehicles for human experience, then legal labels are doubly insufficient receptacles. Yet it is just these labels, so prone to balkanizing experience, upon which we so devoutly depend for our rule of law. Labels give us legitimacy.

But Kamisar is upset, I take it, because the high court has mistaken "the realities" for the "labels." However noble the characterization of our judicial system as "bent on dealing with the realities of the criminal process," can Kamisar, a law professor, seriously contend that "the realities" are the usual focus of our courts of law? Kamisar is disappointed by the court for the same reasons Elliott left law school, that is, because the rule of law in our society so poorly enables us to deal sensitively with the field of human interaction. (Here, "sensitively" can also mean "sensibly," if it implies that the accuracy obtained is always bounded by the capacities of humans.) I would argue that the law can only maintain the order it creates, and that legal authority therefore strives not for justice, but rather for an order that will guarantee the law's own continued experience. So our conception of the world descends to the perception of the lawyers, harbingers of the monopolistic rule of law.

Enter Professor Burt on the abortion issue, Bickel-brained and upset that the court has

thrust itself into such a moral dilemma. His dispute is similar to, but also distinct from that of Kamisar. Kamisar is dismayed that the court has chosen to ignore reality and profess the principles. Burt is concerned because the court has confronted the reality and then tried to make it fit the bag of principles it has. I confess, it always gives me great delight to hear a law professor try to outline the limitations inherent in the rule of law. Of course Burt only urges judicial limitations, but his significant concession is that the rule of law can be breached, and here it is done by value preferences too idiosyncratic to satisfy norms of proper judicial functions." Reality keeps cropping up.

Burt's position illustrates the firm grip our rules of law have on reality. For him, the issue is not whether or not the moral dilemmas surrounding the practice of abortion should be resolved legally, but rather merely which legal institution will pronounce the right and the wrong on the issue. But it is much too late in the game seriously to worry about which legal group decides. With a population so wedded to the rule of law, and so convinced that legal concepts best describe reality that it probably makes little difference in the long term which set of lawyers makes the first stab. Nobody questions the tendency to make every moral issue a legal issue. Nobody questions the

rule of law as only one set of linguistic labels among many capable of describing the world. As Mr. Elliott indicated, the lawyer's aim is to translate the human into the legal, but the quality of that translation does not mitigate the effect of such a rule of law that jealously dictates that nothing will be intelligible unless that translation is made.

Other people offer interpretations of the world in words, like poets, authors, social scientists, but they do not make laws, and their perceptions are subject to scrutiny based on each person's own concrete experience of the world. But the legal interpretation sticks. The Supreme Court is right because it is final. The rule of law becomes total. It is the determinative reality.

This society is too legal, but maybe that is just another way of saying that as people become more and more removed from essential everyday experience, as scale

cont'd from p.1

Judges may be less than tolerant of parties who wish to expend court time. A story McCauley tells may be as illustrative of the vagaries of practice in a rural county as it is of judicial attitudes generally.

A farmer in Chelsea, Michigan sued a fuel oil company for a spill onto his land. Trial was before a judge sitting in Chelsea, and McCauley appeared to defend the insured. He was confident of a dismissal since his client was not responsible for the conduct alleged to have caused the spill. Plaintiff's case consisted of the bare testimony of the farmer who claimed an inflated figure as damages. At the end of the farmer's tale, the judge, sitting without a jury, called counsel to his chambers. There McCauley remembers the judge told him, "I'm going to give this farmer what he's asking unless you got something damned good up your sleeve. I suggest you reach a consent agreement in this case." Needless to say, (the) justice prevailed and McCauley's client forked over.

Not all of McCauley's experiences in court have been so costly. Many days are dotted with human interest, "the stuff," as McCauley puts it, "that novels are made of." He has one anecdote about a lazy afternoon in court while he was waiting for his case to be called. The judge had repeatedly announced the next case on his calender but there was no response from the lawyers present. Suddenly a crusty, white-haired attorney bolted up and boomed, "Ready for the defense, your honor!" "Frank," suggested the judge, "I think you need new batteries." "What's that your honor?" (Louder:) "I said, you need new batteries." "Oh yes, your honor, right you are your honor."

By and large, however, McCauley's time is marked by the "daily routine quality of the work." He finds that, while he meets fewer people in the course of his work than he did in the admissions job, he "can do more for them." He left admissions because, invariably, he ended up talking to "many different kinds of interesting and intelligent people about the same subject." Moving to DeVine & DeVine has allowed McCauley "more scope for my abilities" and yet the chance to retain his

personal associations with the Law School, to "keep plugged into new ideas and useful idealism." By not leaving Ann Arbor, he has spared his family and himself the disruption of establishing new ties. But, on balance, he admits, "I've made a trade-off. I'm doing something I can live with a little longer than the university position."



The perspective of the practicing lawyer has offered McCauley some insights into the profession. One lesson has been the "importance of good, sound research." He rejected the image of television-lawyer melodrama that cases turn on "dramatic information garnered by investigators." The rude truth is, he said, that "most cases are cracked open not by the discovery of hidden facts but by theories of law." Judges demand that lawyers cite authority and, "you can lose to one unanswered case on point."

One prerequisite to good research is sufficient time, a luxury McCauley finds afforded by private practice. "With time things become clearer, you can assess the quality of the case, perhaps be prepared to move to dismiss on the pleadings," he said. With time, however, he also finds comes the responsibility to do a thorough job. Recalling his student Legal Aid experience and even the admissions job, McCauley was "always busy." Lack of time



# MORE LETTERS

SPEIRN

cont'd from p.2

abandons all sense of what is human, we increasingly cling to a system of order that is first determined to preserve itself. Without labels, we are left to our wits and our own communal experience, and who today has the confidence to depend upon that? His decisions aside, with a mind like Justice Douglas', no wonder he forsook literature for the practice of the law.

/s/ sterling speirn

To the Editors:

Women's Lounge in the basement of Hutchins Hall? Separate but equal? Where is Connye Harper when we need her?

/s/ John Loose for the male chauvinist pigs who brown bag it outside the Women's Lounge

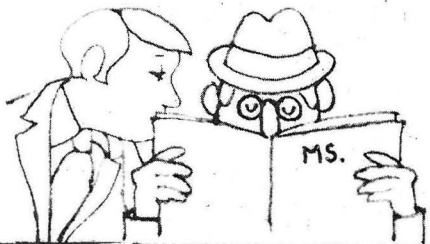
Ms. Harper replies:

Here I am.

Sounds like a case of self-imposed exile to me. I have never seen or heard of any male being denied equal access to that lounge.

The sign on the door that says, "WOMEN" only refers to the lavatory facilities across the hall.

You don't need balls to use the Women's Lounge.



McCAULEY

cont'd from p.3

was he "built-in excuse" for doing little research. "If you'd staved off disaster fifty per cent of the time," he said, "you'd done the best job possible under

## CORRECTION

Some issues of last week's R.G. contained errors in paragraph order affecting the letter entitled, "Bo Burt Bounces Back," and the Douglas article. In uncorrected editions the first four lines of the Burt letter which appear in col. 1, p. 2 should appear at the head of col. 2, p. 1. At col. 1, p. 3 of the Douglas article the last two paragraphs are duplicates. Corrected editions can be identified by the appearance of a second illustration, called "America needs action" on p. 3.

research, he realizes, is self-limiting, "After a certain point, you're going around in circles."

If the relevant law is important, the facts are hardly inconsequential. McCauley has discovered that "weird, tangled fact situations" are not uncommon. Harkening to his student days, McCauley claims he "used to get impatient with the bizarre fact situations," met in casebooks. The average run of cases with "obvious, probable facts," he finds, never gets to lawyers. Rather, the lawyer's lot is "people doing something dumb and wanting to be rescued from it."

His entry into practice may also have resulted in some blunting of McCauley's reform impulses. A one-time Public Service Fellow to Zambia and Director of the Michigan Legal Aid clinic, he now, "in the real world," feels constrained by the "classic ambivalences" of the lawyer. While he concedes that many hide-bound areas of the law, such as auto negligence, divorce, and probate, should be simplified, McCauley asks the imponderable, "What are you going to do? Many lawyers need that work to eat." Since the starvation of American lawyers does not appear to be imminent, we are happy to conclude with McCauley that, somehow, somewhere, "lawyers will find something to keep themselves busy."

As for Matt McCauley, currently it's the Saline cooperative case that occupies his attention and perhaps a wistful glance now and then out his office window.

# Big Sis

The Big Sister Is Watching Award goes to the Air Force this week in recognition of the pamphlet described in this article reprinted from The Guardian (January 31, 1973).

Sis warns men in the law school community to remember all of those hypotheticals peopled by women in the "housewife-mother-consumer-ninnyimage" that they have accepted at face value before they dismiss this article as "trivia."

FEMINIST FRONT. Is there a male chauvinist counter-offensive under way? My impression on watching TV is that there is a stepped-up campaign to reinforce the housewife-mother-consumer-ninny image which was advertising's stock in trade for so many years. In any event, the U.S. Air Force, naturally, is doing its part. They've just published 15,000 copies of a pamphlet called "Customs and Courtesies of the Air Force Wife." And guess what? The Air Force advises her that not only is her own position determined by her husband's rank, but that she should avoid "any discussion of service life which may be construed as complaining." Which is no small feat. Among "questions" the pamphlet presumes to answer is the following: "When shopping with the family is it permissible for an officer to help his wife carry packages or infants?" The answer? (Holding your breath?) "An officer in uniform is expected to avoid situations in which it is necessary to carry bulky packages or small children." How about small packages and bulky children? . . . KICK ASTRO-NAUT. Then there's astronaut James A. Lovell, Jr.'s thought of the week: "We never sent any women into space because we haven't a good reason to. We fully envision however that in the near future we will fly women into space and use them the same way we use

them on earth - for the same purpose."... Perhaps the unkindest cut of all is provided by those astrology dictionaries which list all the great people under various signs of the zodiac. Under capricorn, for instance, virtually the only female entries are Betsy Ross, Loretta Young and Mrs. Calvin Coolidge. A feminist newspaper, The Gold Flower, did some research on the question and discovered that among other women born under that sign were Lucretia Mott, Simone de Beauvoir, Anne Bronte, Rebecca West, Carrie Chapman Catt and Joan of Arc.

Query: What does Sis find offensive about this routing slip (which, by the way is being used by law school faculty and administrators)?

## ROUTING SLIP

The attached correspondence is routed to:

Mr. ....  
Mr. ....  
Mr. ....

- |   |   |
|---|---|
| <input type="checkbox"/> For Your Information | <input type="checkbox"/> Please Return        |
| <input type="checkbox"/> For Your Comments    | <input type="checkbox"/> For Your File        |
| <input type="checkbox"/> For Your Approval    | <input type="checkbox"/> For Handling         |
| <input type="checkbox"/> For Your Signature   | <input type="checkbox"/> Per Your Request     |
| <input type="checkbox"/> Please See Me        | <input type="checkbox"/> Per Our Conversation |

REMARKS .....

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Date ..... Originator .....

Form 7283a

# NOTICES

## LSSS/ELS FETE

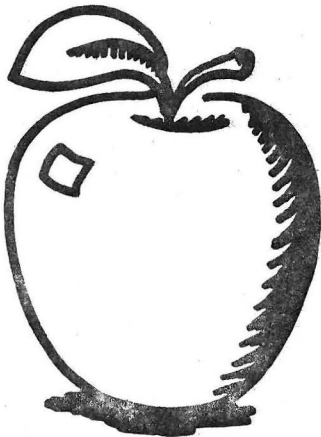
The Law School Student Senate and the Environmental Law Society are sponsoring an environmental gathering this Friday, February 9 at 4:00 p.m.

Representative Charles Varnum will be speaking on the issues of environmental legislation, the DNR, and Michigan's position in the rush for ecological protection. Representative Varnum has been a leading proponent of environmental protection in the Michigan House of Representatives. Still a young legislator, he has been given high marks in legislative skills and is looked upon as a contender for the 1974 State Senate or the U.S. House of Representatives from Michigan's Upper Peninsula legislative district.

Wine and food will be served at the Lawyers Club Lounge at 4:00. All law students and/or ecology minded students are invited to attend. A sign up list for dinner at 5:15 with Rep. Varnum is available. There is no charge for the dinner.



There will be an open meeting on Wednesday, February 14 in Rm. 138 HH between 7 & 8 p.m. Members of the publications will answer questions and give suggestions for writing.



WRITING COMPETITION

WRITING COMPETITION

## SUMMER CLINIC IN DENVER

The University of Denver College of Law is offering its third annual Summer Institute in Clinical Legal Education beginning June 11, 1973. The Institute will be an intensive ten week course, offered as part of the regular summer curriculum, for which the University of Denver awards five quarter hours of credit. Credit is conditioned upon acceptance of each participant's law school. Arranging for transfer of such credits will be the responsibility of the individual student.

The University of Denver has developed one of the most extensive clinical education programs in the country and has found it has offered out-of-state students who participated in the last two years an exciting and stimulating experience. This summer, internships will be offered in such areas as criminal law, family law, juvenile law, environmental law, and others. Students elect to participate in two programs under the supervision of the College of Law's regular and clinical faculty.

Under Colorado Statute and Supreme Court Rule, second and third year law students may represent indigent clients in civil and criminal cases "as if licensed to practice" in municipal, county and district courts throughout the state of Colorado. Under the auspices of the Clinical Education Program, students handle their own cases from the interviewing stage through trial, and appear as counsel of record. Classroom discussion and analysis are an integral part of the clinical experience.

Persons desiring further information concerning this Summer Institute please write to: The University of Denver College of Law, Clinical Education Program, 209 - 16th St., Suite 200, Denver, Colorado 80202, (303) 753-3193.

UNIVERSITY OF MICHIGAN LAW  
SCHOOL PHOTOGRAPHY CONTEST

The undersigned, believing that sanity and the study of law are not necessarily incompatible, and believing further that the hobby of photography represents a contribution to sanity and should therefore be encouraged, are sponsoring the First Annual, and perhaps last, Law School Photography Contest.

Prizes: First Prize: \$50.00  
Second Prize: \$30.00  
Third Prize: \$20.00

Eligibility:

Any student regularly enrolled in the Winter 1973 Term of the Law School (including those at the graduate level) is eligible to enter.

Theme: "The Law Quadrangle"

Any scene depicting the exterior or interior of the Quadrangle or any activities taking place in or on the Quadrangle will be considered.

Judges: A distinguished panel of judges will select the winners. This panel will not necessarily consist of the undersigned. No pass-fail grading will be employed.

Terms: (1) All entries will be due on or before Friday, April 6, 1973. Results will be announced not later than Friday, April 27, 1973.

(2) Black and white photographs of 8" by 10" dimensions will be eligible for consideration. They should be appropriately mounted for convenient display and handling.

(3) No more than three photographs may be entered by any contestant.

(4) Prints entered may be retained by the Law School for use in its publications. Any print entered may be publicly displayed at the Law School.



(5) The undersigned reserve the right to cancel the contest in the event that too few persons enter to make an interesting competition.

(6) Submit entries to Dean Kuklin's office, 308 Hutchins Hall.

2/1/73 F. Allen, H. Edwards,  
B. Kuklin, S. Siegel

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ASIAN LAW SEMINAR

Considerable interest has been expressed regarding a Seminar on Asian Law, possibly during the coming Fall Term. If you are interested, please phone 764-0536 and leave your name and the country about which you already have some background. If offered, the seminar would permit the student to do research on a legal problem of a country with which he already had some general familiarity.

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1973 - 1974

YEARBOOK STAFF POSITIONS

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# CHESS

PROFESSOR KAHN EXHIBITIONIST

Professor Doug Kahn will exhibit his chessic skills for all the world to see at a simultaneous chess exhibition in the Lawyer's Club Lounge, on Sunday February 18. A "simultaneous" involves one chessplayer who takes on as many players as dare to challenge him, all at the same time. Professor Kahn, a highly rated chessplayer and winner of the Law School Chess Tournament held last fall, is putting on this exhibition to drum up support for the newly organized Law School Chess Club. Anyone who wants to get revenge for a low grade or an earlier defeat, or anyone else, for that matter, is invited to participate. Please bring your own board and Staunton chessmen, though, if you have them, and sign up on a list in the Lawyer's Club lounge next week so Professor Kahn will know how hard to train.

Anybody interested in playing chess, grandmaster or novice, is welcome to join the Chess Club. The Club plans to play matches against other teams, hold an intra-club prize tournament, and perhaps sponsor a speed tournament this fall. Meetings will be held in the Cook room on Thursday nights, at 6:30, subject to later change. For further information, call Ken Knappow, 764-8975, or Mark Pomerantz, 764-9042.



## The Masculine Mystique

Robin Morgan, something of a major-league Nancy Wechsler, included in her recent book of anti-male poems an "Arraignment" of Sylvia Plath's husband, the British poet Ted Hughes. Morgan and others of her ilk apparently believe that Hughes caused his wife's suicide as well as the apparent derangement of the mistress he took up with after leaving Plath. Not one to boggle at legal niceties, Morgan's poem concludes with a clear exhortation for women to repay Hughes by "blowing out his brains."

One is tempted to observe that poets often deserve each other, or that Hughes' history of ill-starred involvement may imply some weakness on the part of his partners as well as himself. There are more interesting avenues to explore.

Morgan's polemic is tasteless if salable, but her (male) editors at Random House consented to the inclusion of the diatribe after some phrases were added to protect against a libel suit. Morgan has since gotten the maximum possible mileage from the incident, claiming Random House deliberately held up publication to "intimidate" her into the changes. It seems hard to credit R/H with such tactics inasmuch as they did finally publish the expurgated version, which the slick 'Ms.' refused. Either sisterhood is not quite as powerful [or unthinking] as Ms. Morgan would wish, or Gloria Steinem is not yet so liberated as to consider public appeals to murder a fitting solution to someone else's emotional problems.

Incidentally, "New Woman" folded after some 10 months with a loss of a cool million. Is it possible that exploitation is not limited by sexual lines, just as intelligence is not, and that its readership felt "used?"

--R.B.P.